

9.05.00.00 CONTRACTS - WITH INDEPENDENT EXPERTS

9.05.01.00 Contract Form

Standard contract forms are used to contract with independent experts for appraisal and expert witness services, as directed by the Administrative Service Center, Office of Service Contracts.

9.05.02.00 Contract Requirements

The table on the following page lists provisions that must be included in the contract when the expert is required to prepare a report and/or to act as an expert witness in a condemnation trial.

9.05.03.00 Rate of Pay

The expert is paid an hourly rate for preparation of the appraisal report up to a specified maximum fee. In establishing the hourly rate, the District should consider the type and class of expert suitable for the particular assignment and the expert's current employment in other districts. The District should estimate the number of hours required to complete the assignment, taking into consideration, but not restricted to, the following:

- State's appraisal of subject property.
- information on local economic conditions
- available sales and listing information
- whether the joint factual data system is to be employed
- number of parcels involved
- previous fees paid for view and inspection
- if the expert has recently worked in the same neighborhood on similar types of property
- any special estimates that may have been secured and paid for by the expert

An estimate of the fee should then be based on the number of hours required, multiplied by the hourly rate.

In addition, the expert is paid an hourly rate for additional services not within the scope of the

original report, such as pretrial conferences with the State's attorney and appearances in court or at depositions. (A normal court workday consists of the regular hours the court generally is in session.)

Where the expert is employed on a strict hourly basis, the fee for services shall be based on the expert's ability as required for the specific case.

9.05.04.00 Responsibility for Final Terms and Proper Fee

The DDC-R/W has final responsibility for determining the final terms of the contract and the proper fee for the report. In addition, the DDC-R/W must recommend approval of the contract after it is signed by the expert.

The DDC-R/W, or authorized representative, shall approve the appraisal fee and hourly rate before the contract is submitted to the expert.

9.05.05.00 Presubmission Conference

A presubmission conference with the District and the State's attorney shall be required as a term of the expert's contract. The presubmission obligation assures that all contract obligations are met before the final report is submitted. The District arranges for the presubmission conference and notifies the State's attorney of the time and place of the conference.

9.05.06.00 Specialty Contracts

Contracts with independent specialty appraisers shall include attachments with specific instructions to assure that the specialty appraiser is aware of all report requirements. The real estate appraiser and the specialist should confer on the valuation after both have inspected the property. They should determine any differences of opinion on the function or utility of individual items of machinery and equipment and on the valuation procedure to be followed.

CONTRACT REQUIREMENTS		
Provision	Requirement	Explanation
Scope of Services	<ol style="list-style-type: none"> 1. Description of property by Superior Court case number and parcel. 2. Date of valuation. 3. Statement of exact nature of the service to be performed. 	Indicate if the services include preparation of an appraisal report, acting as an expert witness, or other valuation duties.
Report Format	The appraisal report format shall conform to the requirements of the Appraisal Chapter of the Right of Way Manual.	The District Appraisal Branch reviews the report for proper appraisal procedure and conformance with the Manual. The Regional Legal Office and Acquisition Branch will not use the report in any manner until this review is complete.
Report Delivery	<ol style="list-style-type: none"> 1. Date of report delivery. 2. Report delivery date may not be extended without written authorization by the DDC-RW or authorized representative. 3. Report shall be addressed to the attorney in charge of the Regional Legal Office, c/o of the DDC-RW or authorized representative. 	<p>If extension of the date for report delivery is necessary, the State's attorney makes arrangements through the DDC-RW or authorized representative.</p> <p>The RW representative sends written authorization to the expert granting the extension and sends a copy to the State's attorney.</p>
Term	<ol style="list-style-type: none"> 1. Beginning date and termination date. 2. Contract is of no force and effect until approved by the State. 3. Payment cannot be made for work performed prior to date of the agreement or after its termination date. 	<p>In establishing a termination date, the District should allow sufficient time for completion of the trial prior to termination of the contract.</p> <p>The District should advise the expert that any work performed prior to receiving an executed copy of the contract is at the expert's own risk.</p>
Payment	<ol style="list-style-type: none"> 1. Total payment for all services, showing the fee to be paid for each parcel included in the contract. 2. Payment for the complete report. 3. A sum per hour for pre-trial conferences with the State's attorney or additional services not within the scope of the original report. 4. A sum per hour for appearances in Court or at depositions as a witness. 	The District shall authorize additional services in writing. The expert shall act as a witness pursuant to directions from the State's authorized representative.
Termination	Statement that the expert must cease work at the State's request whereupon payment shall be prorated on the ratio of work completed to total work required to complete the report.	<p>The expert shall furnish written documentation justifying prorated payment for completed work.</p> <p>If the parcel involved is acquired by negotiations, the District must immediately notify the expert and the Regional Legal Office in writing so that unnecessary work is not done at State's expense.</p>

9.05.07.00 Contract to View and Inspect

If an OP is obtained and imminent construction requires the use of property, arrangements should be made with the experts to spend such time as necessary inspecting, measuring improvements, and taking pictures of the property prior to clearing the right of way. This is essential to ensure that experts are properly qualified to testify in court about the values and damages involved. The Administrative Service Center, Office of Service Contracts prepares the contracts for these services.

Type	Description
Scope	The contractor shall view, inspect, and take the necessary measurements, photographs, notes, etc., of the parcels described and notify the State's attorney through the DDC-R/W of the completion of the assignment on or before a specified date.
Additional Services	The contract shall provide that the contractor will enter into an additional contract in the event services are required for a complete appraisal and testimony involving any or all of the parcels described.
Termination Date	The termination date for the view and inspect contract shall be sufficiently far enough in the future so the contract will still be in effect on the date the State might require the contractor's service in preparing a complete appraisal.

9.05.08.00 Amendments to Existing Contracts

An amendment is required if it appears a contract will expire before the required services are completed for reasons beyond the control of the contractor or if additional funds are required because the scope of work is enlarged. District Right of Way must request the Administrative Service Center, Office of Service Contracts to process an amendment prior to the expiration date of the contract. The amendment is processed essentially in the same manner and should

be executed prior to expiration of the original contract.

It should be made clear to the contractor that additional work must be authorized in writing and with a mutual understanding of the nature of the work and approximate charge prior to performance.

9.05.09.00 Date of Valuation

Generally the date of valuation is the date of Deposit of Probable Compensation. If no deposit has been made and the trial commences one year after the filing of the Complaint, the date of valuation becomes the date of the trial, unless the delay has been caused by the defendant. If the trial commences within one year of the filing of the Complaint, the date of valuation is the date the Complaint was filed.

The value of the part to be acquired, any damages, and special benefits are based on conditions at the time of the filing of the Complaint. Improvements made subsequent to the date of the service of the Summons and Complaint shall not be taken into account in determining compensation unless one of the conditions in CCP Section 1263.240 is established. If improvements are removed or destroyed, the general rule is that the person in possession bears the risk of loss. (See CCP Section 1263.230.)

9.05.10.00 Special Litigation Information

An independent appraiser should be impartial, not partisan. The State's attorney must rely heavily on the appraiser for advice and education on the technical problems of the case. While not concerned with the tactics of the case, the appraiser must be in a position to not only consult with the attorney on the forensic aspects of the litigation but to point out any matters the attorney should be prepared to handle.

The entire report serves to assist the State's attorney in meeting with the adversary and rebutting their contentions. In addition, the appraiser should have information in their file not to be relied upon but that might be of particular value to the attorney in this regard. Examples of matters that might be included are listed below.

- Sales the appraiser might have used except for special facts surrounding the transactions.
- Listings, offers, and options.

- Rents being asked for on the subject and comparable properties.
- Indications of the owner's valuation theory when in conflict with the appraiser's conclusions.
- Speculative matters not relied upon but that should be known to the trial attorney.
- All other matters that might be of assistance to the trial attorney but not relied upon by the appraiser.

There are certain matters that cannot be relied upon by an expert as a basis for an opinion of value. These matters are listed in the Evidence Code, Section 822.

9.05.11.00 Report Analysis

After the independent appraiser has had an opportunity to resolve any suggested corrections, the District Appraisal Branch prepares a separate Report Analysis (Exhibit 7-EX-18) for the completed appraisal of each trial ownership in the report. The staff appraiser who prepared the acquisition appraisal will not prepare the Report Analysis. The analysis is also used for subsequent revisions and is modified for other expert studies and reports.

The instructions above also apply to condemnation reports prepared by staff expert witnesses.

The Appraisal Branch includes the following in the Report Analysis:

- **Compliance** - Comment on compliance with report standards and compare staff and independent reports. If a significant difference exists between the staff and independent appraisals or between independent appraisals, explain the difference.
- **Value** - Tabulate the major value of the current staff appraisal, the experts' appraisals, and other experts' appraisals received to date in the Analysis Section. If the submission is a revision of a previous appraisal, show both the original and updated amounts. If the transaction has been concluded by settlement or judgment, show the amounts and explain the delay in transmittal. Comment on major differences in value or other important information.

The Appraisal Branch returns the report to the Acquisition Branch with the originals and sends a copy of each analysis to the State's attorney. The Appraisal Branch shall neither approve nor disapprove the report. The analysis will not contain recommendations as to possible settlement amounts or negotiation approaches.

The Acquisition Branch decides on use of the appraisal considering court exposure, effect on other transactions, etc.

This section is not in conflict with the approval of fee payment on Independent Expert Claim (Form R/W 9-18). Fee payment approval is dependent upon the expert's compliance with the contract regardless of the acceptability of the appraisal conclusions.

9.05.12.00 Pre-Trial Settlements Over Approved Appraisal Amount

To meet FHWA requirements for establishing and updating just compensation, the district will handle all settlements that exceed the amount of the approved staff appraisal as follows:

- Prior to filing of an eminent domain suit and hiring of an independent expert witness, any settlement for property that exceeds the amount of the approved staff appraisal is considered an Administrative Settlement. (See Section 8.01.28.00.)
- Once an eminent domain suit has been filed and independent expert witness has been hired, any settlement proposal based upon new appraisal data from the expert witness is considered a Legal Settlement. (See Section 8.01.28.01.) For Legal Settlements an Attorney's Legal Settlement Memo must be received and approved prior to delivery of any payment. This does not preclude processing the check request (Form RW 9-20) through the Accounting Services Center as soon as settlement is confirmed.

NOTES: